

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2487 of 1984

with

SPECIAL CIVIL APPLICATION No 6064 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

WADHWAN KELVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2487 of 1984
MR A.B.Mithani for Mr. PM RAVAL for Petitioner
Mr. V.B.Gharania, AGP for Respondents.
2. Special Civil ApplicationNo 6064 of 1984
MR A.B.Mithani for Mr. PM RAVAL for Petitioner
Mr. V.B.Gharania, AGP the respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/02/99

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the judgment and order dated 5th January, 1984 of the Deputy Secretary, Revenue Department, Government of Gujarat in case no. 4 of 1977 against the order dated 15.7.81 passed by the Deputy Collector, Wadhwan sub-division for exemption.

2. The petitioner is a Trust registered under Bombay Public Trusts Act, 1950 and imparting education from standard 8 to 10 and education relating to cultivation. The petitioner moved an application for exemption being Exemption case no. 4 of 1977 before the Deputy Collector Wadhwan sub-division, Surendranagar on 18.12.76 and that application was required to be filed till 29th July, 1976 under the provisions of law. The petitioner also filed an application for condonation of delay and the delay was condoned by an order dated 17th January, 1977. The claim of the petitioner was allowed in part and exemption was granted for holding of agricultural land under section 3(1)(d) of the provisions of Gujarat Agricultural Lands Ceiling Act, 1960

(1) for multipurpose school
of standards 8, 9, 10 : 15 hectares

(2) for other four educational institutions :
10 hectares

Total...25 Hectares.

by an order dated 15th July, 1981.

3. By an order dated 5th January, 1984 the Deputy Secretary, Revenue Department while exercising revisional jurisdiction set aside the order of the Deputy Collector, mainly on two grounds i.e. the Deputy Collector has given exemption to the institution against the provisions of law because the institution belatedly filed the application for exemption and though there was no provision in law to condone such delay, the Deputy Collector has by condoning the delay allowed the application for exemption beyond time which is contrary to the provisions of law. Secondly, the exemption could be granted only in respect of the land under section 3(1)(g) which is being used in imparting education. The institution was imparting education of agriculture in part and that was not an exclusive activity of the institution and the exemption granted by the Deputy Collector under section 3(1)(g) is not sustainable in the eye of law.

4. I have heard the learned counsel for the parties. The learned counsel for the petitioner submitted that section 39 provides the application of the provisions of sections 4,5,12 and 14 of the Limitation Act only in respect of filing of the appeal and the application for revision. The Act does not exclude application of the provisions of sections 4,5,112 and 14 of the Limitation Act to the proceedings or any application moved before the authority concerned and in this respect, this Court has taken a view by a judgment dated 5.10.79 in Special Civil Application no. 1046 of 1978 in which it has been held as under:

"In the instant case, it is clear that the aforesaid sub-rule(2) which is having the statutory force has prescribed the period of six months for the purpose of making an application under sub-section (2) of section 8 of the Act. That period of limitation is obviously different from the period prescribed by the Schedule annexed to the Limitation Act, 1963. Under the circumstances on a plain reading of section 29(2) of the Limitation Act, 1963, it is clear to my mind that in the instant case, the provisions of sections 4 to 24 shall apply to the present case. It may be emphasised that the application of the said section are not expressly excluded either by the aforesaid Act or the Rules."

5. As such on the basis of the view taken by this Court, the provisions contained in sections 4 to 24 shall also apply for filing an application before appropriate authority under the provisions of Gujarat Agricultural Lands Ceiling Act, 1960. Thus, the Tribunal has committed an error on the face of the record in not applying the provisions of Limitation Act to the application made under section 31-D for exemption under the Act. The learned counsel for the petitioner also submitted that the Government has also committed an error regarding exemption of the land granted to the petitioner as the petitioner Trust is imparting education of standards 8 to 10 and is also running some other charitable institution. It is too difficult for this Court to give any finding on this aspect. It could be decided on the basis of the evidence to be recorded by the Deputy Collector after considering the evidence on record or any other evidence which may be produced by the parties.

6. In the facts and circumstances stated

above, the petition deserves to be allowed and the matter is required to be remanded to the Deputy Collector, Wadhwan for a decision afresh in accordance with law after considering the evidence on record.

7. Accordingly, the petition is allowed. The order dated 5.1.1984 passed by the Deputy Secretary in proceedings of Ceiling/Exemption/Case no. 4 of 1977 against the order dated 15.7.81 passed by the Deputy Collector, Wadhwan sub-division giving exemption is hereby quashed and set aside. The matter is remanded to the Deputy Collector, Wadhwan sub-division to decide afresh within a period of six months from the date of production of a certified copy of this judgment, after considering the evidence already produced on the record and that might be produced by the parties. Rule is made absolute accordingly to the aforesaid extent. Interim relief if any, stands vacated. No order as to costs.

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